

**ANNUAL REPORT TO
THE GENERAL ASSEMBLY
ON TOBACCO ENFORCEMENT
January 1, 2008 thru
December 31, 2008**



DEPARTMENT OF PUBLIC SAFETY
DIVISION OF ALCOHOL AND TOBACCO CONTROL

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The Division of Alcohol and Tobacco gained responsibility for enforcement of tobacco laws on August 28, 2001, with the passage of HB 381. The Division is required to submit an annual report to the General Assembly on the effectiveness of Sections 407.925 through 407.934 in reducing tobacco possession by minors and the tobacco enforcement activities of the Division.

Tobacco Compliance Check Investigations

The Division of Alcohol and Tobacco Control continues to work diligently in its efforts to enforce the provisions of Sections 407.924 through 407.934, RSMo, and the Rules and Regulations of the Supervisor of Alcohol and Tobacco Control 11 CSR 70-3. The Division is currently the only agency charged with the responsibility to enforce the tobacco control laws of the State of Missouri. In previous years, the enforcement of tobacco laws by the Division was accomplished with surveillance type investigations. This type of enforcement does not easily measure the effectiveness of the enforcement. Compliance checks have been recognized as an excellent method to attack the problems associated with the unlawful sale or distribution of tobacco products.

The State Supervisor established mandatory guidelines for the use of minors in investigations by the state, county, municipal, or other local authorities in 11 CSR 70-3. These regulations became effective February 28, 2002. The Division can take action against any non-compliant vendor if the mandatory guidelines are followed. The mandatory guideline regulations do not create a local preemption; however, the guidelines must be followed for the Supervisor of Alcohol and Tobacco Control to take action against noncompliant vendors.

The Division of Alcohol and Tobacco Control requires each of its three Districts to complete thirty compliance checks a month. Should the retailer be in noncompliance and cited for violation of Sale or Supply of Tobacco Products to a minor, a second compliance check or re-inspection will be done at that retail establishment within 60

days to determine compliance. The re-inspection check is in addition to the thirty compliance checks scheduled for the month.

Reflected below are the statistics resulting from the enforcement work and training performed by the Division of Alcohol and Tobacco Control:

TOBACCO COMPLAINTS

FY 2003	27
FY 2004	35
FY 2005	16
FY 200	64
FY 2007	14
FY 2008	20

TOBACCO ARRESTS

	<u>MIP</u>	<u>SALE TO MINOR</u>	<u>TOTAL</u>
FY 2002	201	21	222
FY 2003	395	10	405
FY 2004	162	8	170
FY 2005	127	80	207
FY 2006	50	125	175
FY 2007	21	53	74
FY 2008	17	101	118

SERVER TRAINING/TOBACCO INCLUDED

	<u>Number of Training Sessions</u>	<u>Number of People Trained</u>
FY 2003	66	1,878
FY 2004	135	2,396
FY 2005	143	2,977
FY 2006	173	3,955
FY 2007	247	5,060
FY 2008	252	6,923

NUMBER OF TOBACCO COMPLIANCE CHECKS – CY 2008

Compliant Retailers	171	Compliant 65%
NonCompliant Retailers	92	Non-Compliant 35%
Retailers Closed/ Out of Business	<u>6</u>	
Total Number of Retailers Checked	<u>269</u>	

Dispositions of Violations of Sale to Minor – CY 2008

Retailers Exempt from Penalties	41
Retailers Receiving Letters of Reprimand	46
Retailers Receiving Suspension	1
Retailers Having Pending Dispositions	4

Statistics for Sales of Tobacco Products to a Minor – CY'2008

	<u>Arrests</u>
Female over the age of 30 – sale to a minor	18
Females under the age of 30 – sale to a minor	14
Males over the age of 30 – sale to a minor	11
Males under the age of 30 – sale to a minor	9
Total Arrests (Section 407.931.3)	92

Noncompliant tobacco retailers were cited for the sale of tobacco products to minors and sent letters indicating they have violated the tobacco law. All first offense violations allow retailers to verify they have had Division approved training on the tobacco laws. The law states that training must be in place prior to the violation and the retailer must verify that the employee has attended training. The retailers exempt from reprimands are based upon the verification that an approved training on the tobacco laws was in place or the employee was terminated from employment. Current law allows a tobacco retailer up to five violations before the Division of Alcohol and Tobacco Control can order a suspension of sale of tobacco products.

In addition, The Division meets with prosecutors to encourage aggressive and consistent prosecution of tobacco-related offenses. As a result, prosecutors are showing an increased willingness to prosecute tobacco-related offenses. Continued joint cooperation between the Division's enforcement personnel and the prosecutors will ensure the success of the tobacco enforcement program. Following are statistics on the disposition of the above sale of tobacco products to minor charges:

Disposition of Sale of Tobacco Products to Minor (Section 407.931.3) – CY'2008

- 41 Guilty dispositions for the Sale of Tobacco Products to Minors
(\$2439.50 in fines collected by the Courts)
- 2 Warrant Status for Failure to Appear

0	Diversion
0	Not Guilty Dispositions for the Sale of Tobacco Products to Minors
0	Dismissed Cases
29	Pending Dispositions
3	Cases Not Filed
<u>2</u>	Cases No Records Found
<u>77</u>	Total

The dispositions on many of the charges are unknown at this time as the County Prosecutors and/or Circuit Clerks do not always send dispositions to the Division. The Division continues to work on finding the dispositions on all charges.

Enforcement Activity / Minors

The Agents perform alcohol and tobacco enforcement in conjunction. Any time an Agent works in the field, he/she investigates for both alcohol and tobacco violations. With regard to other minor tobacco-related offenses such as Possession or Attempt to Purchase Tobacco Products by a Minor, the following information is the Division's enforcement activity:

Possession /Attempt to Purchase Tobacco by a Minor (Section 407.933.3) – CY'2008

7	Guilty Dispositions for the Possession/Attempt to Purchase Tobacco by a Minor (\$199.50 in fines collected by the Courts)
0	Warrant Issued for Failure to Appear
0	Not Guilty Dispositions for the Possession/Attempt to Purchase Tobacco by a Minor
0	Juveniles Referred to Juvenile Court
10	Unknown Dispositions

Misrepresentation of Age to Purchase Tobacco (Section 407.933.2) - CY'2008

No Arrests

Unlawful Sale of Individual Cigarette (Section 407.931.3) - CY'2008

No Arrests

As noted above, the dispositions on many of the arrests are unknown because the County Prosecutors and/or Circuit Clerks have not reported dispositions to the Division at this time.

Divisions Other Logged Tobacco Activity

The Division receives \$144,760 from the Healthy Family Trust Funds for tobacco enforcement. The monies received from the Healthy Family Trust funds one tobacco program manager and two clerical employees. The Tobacco Program Manager recruits the minors for compliance checks, reviews all the tobacco compliance checks, institutes training sessions, monitors all tobacco violations, updates tobacco training information and updates the current retailer list in conjunction with the Department of Mental Health, Division of Alcohol and Drug Abuse, and the Missouri Department of Revenue. The clerical employees enter the tobacco statistics, prepare correspondence and other miscellaneous duties. The Agents doing the Field Enforcement are funded through General Revenue. The Division performs Routine Inspections, Routine Investigations and Special Investigations of vendors/retailers, along with Server Training. It should again be noted that the numbers reflected on these activities are joint tobacco and alcohol enforcement. The majority of retailers that sell alcohol also sell tobacco products. This allows the Agents to complete both inspections at the same time and allows quality contact with the retailers to answer questions regarding tobacco issues along with alcohol concerns. Following are alcohol and tobacco enforcement activities for the year:

Alcohol and Tobacco Enforcement Activities By District - CY'2008

	<u>Kansas City</u>	<u>Jefferson City</u>	<u>St. Louis</u>	<u>Total</u>
Routine Inspections	1,406	747	2,509	4,662
Routine Investigations	4,825	3,684	5,351	13,860
Special Investigations	1,021	304	1,406	2,731
Public Relations	1,363	646	2,049	4,058
Badges in Business	206	109	340	655
Server Training	95	36	121	252
No. of People Trained	1,945	958	4,020	6,923

The Division of Alcohol and Tobacco Control was able to identify over 7,500 vendors of tobacco products in the state. This was accomplished by personal visits to the vendors business, working with the Department of Mental Health, Division of Alcohol and Drug Abuse, and the Missouri Department of Revenue. These lists are incomplete because businesses are not required to register as a seller of tobacco products. It is difficult to identify all retailers and maintain an accurate list when licensing or registration is not statutorily mandated.

Synar Amendment

The Center for Substance Abuse Prevention (CSAP) oversees implementation of the Synar Amendment, which requires States to have laws in place prohibiting the sale and distribution of tobacco products to persons under 18 and to enforce those laws effectively. States are to achieve a maximum sales-to-minors rate of not greater than 20 percent. If the state fails to meet the Synar regulations, it stands to lose 40% of its SAPT funding. Through the Substance Abuse Prevention and Treatment (SAPT) Block Grant, Missouri was awarded:

FY 2005	\$26,384,412
FY 2006	\$26,062,300
FY 2007	\$26,062,300
FY 2008	\$26,067,589
FY 2009	\$26,068,220

The Department of Mental Health, Division of Alcohol and Drug Abuse were given the responsibility for enforcing Synar Regulations. The Division of Alcohol and Tobacco Control was given the responsibility of enforcing the Youth Access Tobacco Laws.

Conclusion

The Division of Alcohol and Tobacco Control is the enforcement component of the overall approach to the comprehensive tobacco program. In addition, the Division is the only agency that takes administrative action against tobacco retail violators. The use of compliance checks as an enforcement tool has been effective in determining noncompliant tobacco retailers and serves as a deterrent for violators. The further expansion of compliance checks will logically lower the percentage of non-compliant tobacco vendors, thereby allowing the state to achieve a maximum sales-to-minors rate of not greater than 20 percent and protecting the SAPT Block Funding Grant. The Division will continue to work within the available resources to assure the effectiveness of Sections 407.925 through 407.934, RSMo, in reducing youth access to tobacco products.